IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9754 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAYKUMAR BHAGWANDAS SHELAR

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 9754 of 2001

MR ANIL C THAKORE for Petitioner No. 1

MR ASHISH M DAGLI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/12/2001

ORAL JUDGEMENT

Rule. The learned counsel for the respondent waives service of Rule on behalf of the respondent. The matter is taken up for final hearing today at the request of the learned counsel for the parties.

2. In this petition under Article 226 of the Constitution, the petitioner has prayed for appropriate writ, order or direction to direct the Gujarat State Road Transport Corporation to consider the petitioner's representation and to give him compassionate appointment.

3. The petitioner's father Bhagwandas Shelar was an employee of the respondent - Corporation. The petitioner's father was employed as a conductor. In connection with an incident which took place in May, 1996, the respondent Corporation initiated a departmental inquiry against the petitioner's father and passed order dated 26-8-1996 dismissing him from service. That order of dismissal was challenged before the Labour Court and in Reference (LCS) No.241 of 1997, the Labour Court, Surat set aside the order of dismissal and directed the Corporation to reinstate the petitioner's father in service with continuity of service but without backwages and subject to imposition of penalty of stoppage of three increments with future effect. Thereafter the award was published and in compliance of the said award, the respondent - Corporation sent an intimation dated 30-9-2000 (Annexure C) calling upon the petitioner's father to report for duty. Unfortunately, by the time the aforesaid letter reached the petitioner's father, the petitioner's father expired on 1-10-2000. Hence, on 6-10-2000, the petitioner submitted a representation (Annexure D) requesting the Corporation to give the petitioner compassionate appointment as a dependent of the deceased father of the petitioner.

4. The Corporation rejected the said representation by its communication dated 20-7-2001 (Annxure I) on the ground that the petitioner's father had expired before his reinstatement. Hence the petitioner has filed the present petition for appropriate directions.

5. Mr Anil C Thakore learned counsel for the petitioner has submitted that when the Labour Court had found the order of dismissal to be illegal and quashed and set aside the same, the petitioner's father had to be treated as in service of the respondent - Corporation. Since the petitioner's father was in service of the respondent - Corporation, the petitioner as a dependent of the deceased employee was entitled to get compassionate appointment and the said claim could not have been rejected on the ground that the petitioner's father had not physically reported for duty.

6. On the other hand, the learned counsel for the

respondent - Corporation has opposed the petition and submitted that since the petitioner's father had not physically reported for duty in compliance with the award of the Labour Court, the petitioner's father was not an employee of the Corporation at the time of his death on 1-10-2000 and therefore the petitioner is not entitled to get any relief.

7. Having heard the learned counsel for the parties, it appears to the Court that when the Labour Court found the order of dismissal to be illegal and quashed and set aside the same and directed the Corporation to reinstate the petitioner's father to the original post with continuity of service, the petitioner's father continued to be an employee of the respondent Corporation. Merely because the petitioner's father could not physically report for duty as the petitioner's father expired on 1-10-2000 before he could receive the order of reinstatement dated 30-9-2000, the petitioner's legitimate claim for compassionate appointment cannot be defeated. It is not the case of the respondent Corporation that after the award dated 31-5-2000 passed by the Labour Court, the respondent Corporation had again terminated the service of the petitioner's father. Hence the petitioner's father was very much an employee of the respondent - Corporation at the time of his death on 1-10-2000.

8. In view of the above discussion, the petition is allowed. The respondent - Corporation is directed to consider the petitioner's case for compassionate appointment on the basis that the petitioner's father Bhagwandas Shelar was an employee of the respondent Corporation at the time of his death on 1-10-2000.

Rule is made absolute with no order as to costs.

(M.S. Shah,J)
zgs/-